

EXHIBIT 38

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE

ULTIMA SERVICES CORPORATION

v.

U.S. DEPARTMENT OF
AGRICULTURE, et al.,

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:
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:
:
:

: Case No.
: 2:2020cv00041

Monday, April 25, 2022

30(b)(6) Zoom Videoconference
deposition of JOHN KLEIN, taken with the witness
participating from his residence, beginning at
9:38 a.m., Eastern Standard Time, before Ryan K.
Black, a Registered Professional Reporter,
Certified Livenote Reporter and Notary Public.

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Klein 1	a document Bates Numbered US0050764 through US0050774.....	26
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Klein 3	a document titled Federal Register, dated Thursday, October 12, 2002, Executive Order 13170 - Increasing Access and Opportunities for Disadvantaged Businesses.....	41
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1 A. Yes.

2 Q. And one of the elements that is analyzed
3 to determine whether or not an applicant has a
4 potential for success is its access to capital
5 sufficient to maintain its business operations,
6 right?

7 A. Yes.

8 Q. Okay. So the business opportunity
9 specialist in Philadelphia or San Francisco
10 reviews it in the first instance; is that right?

11 A. Yes.

12 Q. Okay. And where does the Office of
13 Certification and Eligibility come in?

14 A. The Philadelphia and San Francisco units
15 are under that office, so they are part of the
16 Office of Certification and Eligibility.

17 Q. So the Business Opportunity Specialist
18 that is reviewing the application is part of that
19 office; is that right?

20 A. Yes.

21 Q. Okay. All right.

22 The initial application is supposed to
23 be reviewed in 90 days; is that right?

24 A. Ninety days after the complete
25 application is filed.

1 Q. Okay. Ninety days after it's completed.
2 So if the business opportunity specialist
3 concludes that there's something missing, it
4 could ask for further information and the clock
5 doesn't run until the complete application is in;
6 is that right?

7 A. That's correct. Yes.

8 Q. All right. And is the time, the 90
9 days, the same regardless of whether an applicant
10 is owned by a member of a presumptive group or
11 someone else?

12 A. It is across the board for all
13 applications, whether it's individually owned,
14 whether it's entity owned, whether it's presumed
15 or not.

16 Q. Okay. Okay.

17 In reviewing the application, the
18 Business Opportunity Specialist looks at the
19 personal financial condition of the owner of an
20 individually owned applicant, right?

21 A. Yes.

22 Q. Okay.

23 A. We look at that status for both those
24 who own and those who are in control for both
25 individuals.

JOHN KLEIN

C E R T I F I C A T E

I do hereby certify that I am a Notary Public in good standing, that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this 10th day of May, 2022.



Notary Public

E R R A T A

1

2 PAGE LINE CHANGE

3 P. 11; Line 24; insert the word "the" between the words "to" and "8(a)" -----

4 Reason for

5 Change: Typo

6 PAGE LINE CHANGE

7 P. 13; Line 12 and Line 13; change the word "cell" to "sub" -----

8 Reason for

9 Change: Typo

10 PAGE LINE CHANGE

11 P. 17; Lines 2-3: insert the word "and" between the words "Management" and "Technical" -----

12 Reason for

13 Change: Typo

14 PAGE LINE CHANGE

15 P. 21; Lines 17-18; change "of participants in a program, dollars," to "participants in the 8(a) program, contract dollars," -----

16 Reason for

17 Change: Typo; clarity

18 PAGE LINE CHANGE

19 P. 40; Lines 8-9; First sentence should read: "I'm sure there are several agencies whose goals for SDBs are greater than 5 percent." -----

20 Reason for

21 Change: Typos

22 PAGE LINE CHANGE

23 P. 54; Line 14; Change "certified.gov" to "certify.gov" -----

24 Reason for

25 Change: Typo

Veritext Legal Solutions

1 PAGE LINE CHANGE

2 _ P. 59; Lines 9-10; change "but on the science part, many times it's" to "but if something is incorrect, many times it's" -----

3 Reason for

4 Change: Transcription error

5 PAGE LINE CHANGE

6 _ P. 59; Lines 17-20; sentence should read as follows: "And they do it based upon a certain size standard. Each NAICS code is assigned a corresponding size standard. So I can register as a small business for NAICS Code 123456, and as an other than small business for NAICS Code 123457, depending upon the corresponding size standard corresponding to the NAICS Code." -----

7 Reason for

8 Change: Typos and Clarification

9 PAGE LINE CHANGE

10 _ P. 60; Line 10; change the word "primary" to "apparent" -----

11 Reason for

12 Change: Typo

13 PAGE LINE CHANGE

14 _ P. 74; Lines 3-4; should read "or they look for things as to whether there are any outstanding debts or things of that sort." -----

15 Reason for

16 Change: Transcription error

17 PAGE LINE CHANGE

18 _ P. 83; Line 7; should read "Alaska", not "Alaskan" -----

19 Reason for

20 Change: Typo

21 PAGE LINE CHANGE

22 _ P. 83; Line 9; delete "or it's -" and add the word "be" between the words "deemed to" and "owned and" -----

23 Reason for

24 Change: Typo

1 PAGE LINE CHANGE

2 P. 87; Line 4; change "the ANC owns X and Joe Smith owns 400 percent of one company" to "the
3 ANC owns 51% of X and Joe Smith owns 49 percent of that company" -----

3 Reason for

4 Change: Typo

5 PAGE LINE CHANGE

6 P. 107; Line 22; change "company Y" to "country Y" -----

7 Reason for

8 Change: Typo

9 PAGE LINE CHANGE

10 P. 127; Line 13; change the word "graduate" to "graduation" -----

11 Reason for

12 Change: Typo

13 PAGE LINE CHANGE

14 P. 138; Line 24; Change "SDBO" to "SDVO"; change "SWB" to "WOSB" -----

15 Reason for

16 Change: Typos

17 PAGE LINE CHANGE

18 P. 140; Line 12; change "JCBD" to "GCB" -----

19 Reason for

20 Change: Typo

21 PAGE LINE CHANGE

22 P. 140; Line 23; Change "4" to "4.5 million" -----

23 Reason for

24 Change: Typo/clarification

1 PAGE LINE CHANGE

2 P. 153; Line 18; change "an it" to "it an" -----

3 Reason for

4 Change: Typo

5 PAGE LINE CHANGE

6 P. 194; Lines 18-19; "7(j) is management technical assistance" should be changed to read "7(j) is a management and technical assistance program" -----

7 Reason for

8 Change: Typo

9 PAGE LINE CHANGE

10 P. 195; Line 15; Change "with grants" to "or grants" -----

11 Reason for

12 Change: Typo

13 PAGE LINE CHANGE

14 P. 195; Lines 22-23; Change "these contractor grantees" to "these contractors or grantees" ---

15 Reason for

16 Change: Typo

17 PAGE LINE CHANGE

18 P. 199; Line 18; Change "as SBA's" to "of SBA's" -----

19 Reason for

20 Change: Typo

21 PAGE LINE CHANGE

22 -----

23 Reason for


24 Change:

ACKNOWLEDGMENT OF DEPONENT

I, John W. Klein, do
 hereby certify that I have read the foregoing
 pages 1 to 212 and that the same is a
 correct transcription of the answers given by
 me to the questions therein propounded,
 except for the corrections or changes in form
 or substance, if any, noted in the attached
 Errata Sheet.

6-10-22

DATE



SIGNATURE

Subscribed and sworn to before
 me this _____ day of _____, 2022.

My commission expires:

Notary Public